

DOCKET NO. 25188

PETITION OF EL PASO NETWORKS,	§	
LLC FOR ARBITRATION OF AN	§	PUBLIC UTILITY COMMISSION
INTERCONNECTION AGREEMENT	§	
WITH SOUTHWESTERN BELL	§	OF TEXAS
TELEPHONE COMPANY	§	

ORDER NO. 3
PROTECTIVE ORDER

In the above-styled proceeding, it is anticipated that the parties may designate certain documents and information to be confidential and exempt from public disclosure under the Public Information Act, TEX. GOV'T CODE ANN. §§ 552.002-552.353 (Vernon Supp. 1999) (hereinafter "Open Records Act"). Therefore, a Protective Order covering such documents and information should be entered to facilitate timely submission of information in these applications and in any discovery conducted in these proceedings. The Protective Order shall control the production of information and documents in these proceedings until such time as this Protective Order is modified by subsequent order of the presiding officer, the Commission, or a court of competent jurisdiction.

Definition

1. The term "party" as used in this Protective Order means any party to a Commission proceeding whether as a tariff control or contested docket, and for purposes of this Order, the Commission's staff.

2. The term "Confidential Information" refers to any portion of documents, data, information, studies, cost study information and other materials furnished pursuant to requests for information or other modes of discovery, including but not limited to depositions, that are claimed to be trade secrets, confidential business information and information subject to an evidentiary privilege or exempt from public disclosure under the Open Records Act. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under the Open Records Act or a similar statute, nor shall it include information that, at the time it is provided through discovery in these proceedings or prior thereto, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Order. "Confidential Information" shall not

include information found by the presiding officer, the Commission or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Order.

3. Southwestern Bell Telephone ("SWBT") is and at all material times has been an "incumbent local exchange service provider" ("ILEC") in the State of Texas as defined by the Act U.S.C. § 251(b).

4. El Paso Networks, LLC., is a limited liability company with its principal of business at 1001 Louisiana Street, Houston, Texas 70022.

Confidential Information

(a) General. In the discovery or other proceeding or filings to be conducted in connection with this proceeding, a party may designate certain material produced by such party as "Confidential Information." Copies of the material shall be delivered to the Filing Clerk of the Commission and to the presiding officers in a sealed document that is clearly marked on the outside, in letters at least 1" tall, as containing "Confidential Information." Each page of the material submitted under seal shall be consecutively numbered and the envelope shall clearly specify the number of pages contained therein. The party designating the material as confidential information shall clearly identify each portion of the material alleged to be confidential information, and provide a written explanation of the claimed exemption. Such explanation may be accompanied by affidavits providing appropriate factual support for any claimed exemption. The claim of exemption shall also indicate:

(1) any and all exemptions to the Open Records Act claimed to be applicable to the alleged confidential information;

(2) the reasons supporting the party's claim that the information is exempt from public disclosure under the Open Records Act and subject to treatment as confidential information; and

(3) that counsel for the party has reviewed the information sufficiently to state in good faith that the information merits the confidential designation and is exempt from public disclosure under the Public Information Act. Each party will have an additional level of review to insure that the information determined to be confidential is reasonably classified as confidential. There is a rebuttable presumption that all information is non-confidential and the burden of establishing confidentiality will be on the party proposing confidential treatment.

(4) in the event that any party questions whether an item has been inadvertently classified as confidential, then the party shall bring the matter to the producing parties attention prior to taking any action at either the Commission or elsewhere.

(b) Exemption from Disclosure. Material received by the Commission in accordance with this procedure shall be treated as exempt from public disclosure until and unless such confidential information is determined to be public information as the result of an Open Records Decision by the Attorney General, or pursuant to an order of the presiding officer entered after notice to the parties and hearing, or pursuant to an order of a court having jurisdiction.

(c) Material Provided to Parties. Material claimed to be confidential information must be provided to the other parties to this proceeding provided they agree in writing to treat the material as confidential information. One copy of the material shall be provided to each party. The receiving party shall be entitled to only one copy of the Confidential Information, for use by an individual authorized to review the information. The receiving party and any individuals in possession of Confidential Information shall keep the Confidential Information properly secured during all times when the documents are not being reviewed by a person authorized to do so. Faxes shall be permitted and any faxed documents shall be treated as copies of the original material; provided that it shall be the responsibility of the party transmitting documents by fax to insure that the documents are only received by individuals authorized to receive the applicable information.

(d) Review by Parties. Each receiving party may designate specific individuals associated with the party who will be allowed access to the Confidential Information. The individuals who may have access to the confidential information shall be limited to the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party; however, if a party is not using regulatory personnel who are acting at the direction of counsel or is not using outside consultants, the party may designate no more than two individuals who may review information designated as "Confidential Information" pursuant to the Protective Order. These individuals may use the confidential information only for the purpose of presenting or responding to matters raised in the hearing during the course of that proceeding and shall not disclose the confidential information to any person who is not authorized under this section to view this information.

Prior to giving access to Confidential Information as contemplated above to any party authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such persons, and prior to disclosure, such persons shall agree to sign a statement affirmatively stating that the individual has personally reviewed the Order, and will observe the limitations upon the use and disclosure of Confidential Information, in the form of Exhibit A, attached hereto. By signing such statements, a party may not be deemed to have acquiesced in the designation of the material as confidential information or to have waived any rights to contest such designation or to seek further disclosure of the Confidential Information. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practicable, deliver to counsel for the party that produced the Confidential Information a copy of Exhibit A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

Counsel of record for the persons authorized hereunder who requested the copies shall sign a statement in the form of Exhibit B, attached hereto, verifying that the sealed envelope clearly marked as containing Confidential Information has been received and designating the name and address of the individual into whose custody the copies shall be delivered. The designated representative of the producing party shall also sign Exhibit B and verify to whom the sealed envelope was delivered. Access to said copies shall be limited to those persons specified in this Order.

Open Records Requests

If the Secretary of the Commission, presiding officer, or Commission's Staff receive an request pursuant to the Open Records Act, for disclosure of information claimed to be Confidential Information (or any notes reflecting such information) produced pursuant to this Order, then the Secretary, presiding officer, or Commission's Staff shall, as promptly as is reasonably feasible (preferably no later than two (2) business days following receipt of that request), notify the responding party that a request for disclosure has been made pursuant to the Open Records Act. The recipient of that request for disclosure shall timely request an Attorney General's opinion as to whether the information falls within any of the exemptions identified in the Public Information Act. Specifically, pursuant to §§ 552.301-552.308 of the Open Records Act, the recipient of that request for disclosure shall request that the applicable agency decline to

release the requested information, in order to request an Attorney General opinion. As provided for in §§ 552.304 and 552.305(b), the party seeking non-disclosure may submit in writing to the Attorney General that party's reason for withholding the information. The recipient of the request for disclosure may contest the responding party's claim of exemption pursuant to Open Records Act § 552.305(c) in a separate communication to the Attorney General.

Storage at the Commission

Confidential Information, including that portion of testimony containing references thereto, if filed with the Commission, shall clearly be labeled as Confidential and filed under seal, and shall be segregated in the files of the Commission, and shall be withheld from inspection by any persons not bound by the terms of his Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, as a result of an Open Records Decision by the Attorney General, or, after notice to the parties and hearing, pursuant to the order of the presiding officer, the Commission, or a court having jurisdiction.

Good Faith Use of Material

To the extent that such efforts will not damage a party's presentation of its position in these proceedings, each party shall use its best efforts to phrase deposition and other discovery questions, prefiled testimony, questions asked on live examination of a witness, briefs, other pleadings and oral argument in a way which will eliminate or minimize the need for documents in the record to be under seal. Any party intending to refer to Confidential Information during a hearing in a proceeding shall, as soon as possible, provide advance notice of this to the parties, and the presiding officer, identifying with particularity the Confidential Information in question. The party asserting confidentiality bears the burden of proving that the alleged Confidential material should be admitted under seal.

If it becomes necessary, or at the request of a party, the presiding officer may order additional guidelines addressing the procedures and standards for admissibility of alleged Confidential materials.

All persons who may be entitled to receive, or who are afforded access to, any Confidential Information by reason of this Protective Order shall neither use nor disclose the Confidential Information for any purpose other than preparation for and conduct of the Proceeding in which the information was furnished before this Commission or any resulting

proceedings before any judicial tribunal. All such persons shall use their best efforts to keep the Confidential Information secure in accordance with the purposes and intent of this Protective Order. To this end, persons having custody of any Confidential Information shall keep the documents properly secured during all times when the documents are not being reviewed by a person authorized to do so.

Upon the completion of Commission proceedings and any appeals thereof, confidential information received by the parties shall be returned to the producing party or destroyed, at the option of the producing part, absent a contrary order of the Commission or agreement of the parties. Any notes or work product prepared by the receiving party which were derived in whole or in part from the confidential information shall be destroyed at that time. Material filed with the Commission will remain under seal at the Commission and will continue to be treated as confidential information under this subchapter. The Commission may destroy confidential information in accordance with its records retention standards.

Other Rights Preserved

This Protective Order shall in no way constitute any waiver of the rights of any party to contest any assertion of confidentiality or to appeal any finding that specific information is Confidential Information or should be subject to the protective requirement of this Order. The designation of any information as Confidential Information may be challenged to the presiding officer, the Commission, or a court having jurisdiction for a determination, after hearing, as to whether said material should be so classified. Nothing in this Protective Order shall be deemed to prevent the Commission from raising on his or its own motion the correctness of designing information as Confidential Information. Nothing in this Protective Order, or any order of the Commission adopting this Protective Order, shall be construed as an order by the presiding officer or the Commission that the materials exchanged under this Protective Order are in fact entitled to Confidential treatment. Nothing in this Protective Order shall be construed as requiring any party to produce any information that would otherwise be exempt from discovery as a matter of law (e.g., attorney-client privilege or attorney work-product materials), nor as altering the procedures set forth in 16 TEX. ADMIN. CODE § 22.144(d)(2) for asserting any objections to discovery based on a claim of privilege or exemption.

The parties affected by the terms of this Protective Order further retain the right to question, challenge and object to the admissibility of any and all data, information, studies and

other matters furnished under the terms of the Protective Order in response to requests for information or other modes of discovery, and the right to cross-examine or any applicable grounds.

This Protective Order may be superseded by an order of the presiding officer, the Commission, or a court of competent jurisdiction after due notice and an opportunity for comment by affected parties. Titles or subtitles in this Order are informational only and are not intended to affect the textual provisions.

SIGNED AT AUSTIN, TEXAS the _____ day of February 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

JENNIFER FAGAN, ARBITRATOR

STEPHEN MENDOZA, ARBITRATOR

EXHIBIT A
Docket No. 25188

PROTECTIVE ORDER

I agree to comply with and be bound by the terms and conditions of the Protective Order in Docket No. 20268 and as adopted in Docket No. 25188.

SIGNATURE: _____

NAME PRINTED: _____

TITLE: _____

ADDRESS: _____

REPRESENTING: _____

EMPLOYER: _____

DATE: _____

EXHIBIT B
Docket No. 25188

PROTECTIVE ORDER

The copies listed on "Attachment A" have been provided to the designated representative indicated below, pursuant to the terms of the Protective Order in Docket No. 20268 and as adopted in Docket No. 25188.

These copies will remain in the custody of:

Name Printed

STATEMENT OF RECEIPT

I, _____, as (COUNSEL OF RECORD) or
DESIGNATED REPRESENTATIVE) (circle one) have received the sealed envelope marked
"Confidential Information." These copies are to remain in the possession of:

Name: _____

Title: _____

Address: _____

Signed on this _____ day of _____, 2001.

Name Printed: _____

EXHIBIT C
Docket No. 25188

PROTECTIVE ORDER

The undersigned delivered, to a representative of the Commission's Filing Clerk in a sealed envelope clearly marked as "Confidential" in letters at least one inch (1") tall and addressed to the Filing Clerk of the Commission.

Envelope delivered by:

(Applicant)

Date

Envelope received by:

Filing Clerk, Central Records
Public Utility Commission of Texas

Date

ATTACHMENT A
Docket No. 25188

PROTECTIVE ORDER

Copies of the following documents have been provided to Counsel of Record, pursuant to the terms of the Protective Order in Docket No. 20268 and as adopted in Docket No. 25188